IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR [C.G.]

W.P. 26 /2003

PETITIONER

PARMANAND SHARMA S/O Shri Netram Sharma
Aged about 52 years,
Head Constable, 1st Battalion Chattisgarh,
Bhilai ,Distt. :-Durg [C.G.]

VERSUS

RESPONDENTS

1. State of Chhattisgarh through the Secretary
Home Department D.K.S. Bhavan Raipur [C.G.]

2. Director General of Police
State of Chhattisgarh , Home Department
Raipur , [C.G.]

3. Commandant , 1st Battalion C.G.S.A.F. Bhilai,
Distt. Durg.

4. Deputy Inspector General of Police,
1st Battalion C.G.S.A.F. Bhilai, Distt. Durg.

P.R. No. 3083/03
Presented by Shri N. Malviya
dated 20/3/03

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WRIT PETITION UNDER ARTICLE 226/227 READ WITH ARTICLE 311 OF THE CONSTITUTION OF INDIA

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 28 of 2003

Petitioner Parmanand Sharma

Versus

Respondents State of Chhattisgarh & others

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Neelkanth Malviya, Advocate for the petitioner.

Smt. Anju Ahuja, Deputy Govt. Advocate for the respondents.

ORAL ORDER

(20th March, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioner has filed this petition challenging the orders dated 30.9.1997 (Annexure P/2), 30.9.1998 (Annexure P/4) and 7.10.2002 (Annexure P/7).

2. The admitted facts in nutshell are that the petitioner was working as Head Constable, Incharge of the General Canteen of 11th Battalion for the period from 1.6.1995 to 6.7.1996. On 6.7.1996 the charge to the post of Incharge of General Canteen was handed over to one Shri Samaylal, Assistant Platoon Commandant. On 17.4.1997, charge sheet containing several charges to the following effect was issued to the petitioner i.e. (i) the delinquent employee had not kept records legally and properly, (ii) he had not handed over charge in accordance with law and in time to his successor, (iii) during the transfer period without permission of the competent authority, he had purchased goods worth Rs 67474.78 from different firms, (iv) he had obtained permission from Commandant for the month of September, 1995 but

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thereafter made changes in Srl. No.77 of item ledger blade, separately, whereby general canteen was made to pay Rs. 8800/- for unrequired things and as such financial loss was caused, (v) in the months of 11/95, 4/96 and 6/96, he purchased the materials worth Rs. 2 Lacs without permission of the Commandant, (vi) he had manipulated canteen records by showing huge profit to mislead senior officers, and (vii) without proper permission he advanced materials and cash on loan to outsiders causing loss to the canteen.

3. A proper enquiry was held wherein one Shri P.K. Sinha, Assistant Commandant of the 11th Battalion was appointed as enquiry officer. The enquiry officer in his enquiry found charges No. 1, 2, 3 and 4 as not proved and charges No. 5, 6 and 7 as proved. Agreeing with the findings of the enquiry officer, the Respondent No.3 Commandant 11th Battalion, Special Armed Forces, Bhilai (as he then was before bifurcation of the State of Madhya Pradesh on 1.11.2000) imposed punishment of reduction in rank from the post of Head Constable to the post of Constable for a period of one year without having any effect on the future increments etc. vide order dated 30.9.1997 (Annexure P/2).

4. Being aggrieved, the petitioner filed an appeal before the Deputy Inspector General of Police, Special Armed Forces, Bhilai (Annexure P/3) wherein the petitioner has clearly stated that the petitioner was not supplied with the enquiry report before imposition of punishment. The appellate authority i.e. the Deputy Inspector General of Special Armed Forces, Bhilai vide order dated 30.9.1998 (Annexure P/4) confirmed the findings of the enquiry officer and upheld the penalty imposed by the disciplinary authority.

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5. Being aggrieved the petitioner has filed this petition under Article 226/227 of the Constitution of India praying that the order of punishment dated 30.9.1997 (Annexure P/2) and the appellate order dated 30.9.1998 (Annexure P/4) be quashed. It was further prayed that the order dated 7.10.2002 whereby promotion of the petitioner to the post of Assistant Sub Inspector was denied on the ground that due to the imposition of major penalty i.e. reduction of rank, the petitioner was not entitled to consideration for a period of five years. The petitioner has further prayed that the consequently the petitioner be treated as Head Constable with effect from 30.9.1997.

6. Shri Neelkanth Malviya, learned counsel appearing for the petitioner submits that the denial of the enquiry report to the employee before imposition of major penalty i.e. reduction of rank in service is violative of principle of natural justice and further it is violative of Regulation 230 of the M.P. Police Regulations, which has been adapted by the State of Chhattisgarh. Learned counsel further submits that the penalty of reduction of rank in service be quashed and consequential benefits of promotion be granted to the petitioner as the order of imposition of major penalty is bad and invalid in view of the fact that the impugned punishment dated 30.9.1997 is unconstitutional and contrary to the ratio laid down by the Supreme Court in **Managing Director, ECIL, Hyderabad & others Vs. B. Karunakar and others** { (1993) 4 SCC 727} and further being violative of Regulation 230 of the M.P. Police Regulations.

7. Smt. Anju Ahuja, learned Deputy Govt. Advocate appearing for the respondents, per contra, submits that this petition deserves to be rejected on the ground of delay as the petitioner has chosen not to file

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any petition for 4 to 5 years as the appellate order was passed on 30.9.1998 and the present petition was filed on 20.12.2002. Learned counsel further submits that the petitioner has no right to challenge the impugned order of punishment because the petitioner has availed full opportunity of presenting his case before the appellate authority, accordingly this petition deserves to be dismissed.

8. After having heard learned counsel for the parties and having perused the documents annexed to the petition as well as to the return, it is clear and admitted position that the petitioner was not supplied with a copy of the enquiry report till date. The petitioner was not given any opportunity of putting his case before imposition of penalty of reduction of rank in service from the post of Head Constable to the post of Constable. The petitioner has raised the issue of non-supply of the enquiry report on very first opportunity before the appellate authority. This act of the respondents tantamounts to the violation of the principle of natural justice. The appellate authority has chosen not to consider the case of the petitioner to the effect that he was not supplied with a copy of the enquiry report and in a mechanical manner the appellate authority has confirmed the findings recorded by the enquiry officer and upheld the punishment imposed by the disciplinary authority. The appellate authority did not address on the issue of non-supply of the enquiry report to the petitioner before passing the order of imposition of major penalty. It appears the appellate order was passed casually without applying its mind.

9. Regulation 230 of the Madhya Pradesh Police Regulations is reproduced as under:-

> "230. D.E. – Copies of finding in.- In very case a verbatim copy of the original or appellate finding and order will be given at once to a

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police officer against whom an order of punishment is passed, and a note that this has been done will be made on the record. In cases in which the original order is based on the report of a subordinate authority, the copy of the report should be given as well as the order. If the accused wishes for a copy of the rest of the record, he can be supplied with it on payment at the district rates, or on providing his own paper and copyist. If the accused is not present in person to receive the copy of the order, it should be sent to him by registered post, registration fees being paid to cover a postal acknowledgment from the appellant. The postal and the appellant's acknowledgements of the registered letter should be filed with the record."

10. In **Managing Director, ECIL, Hyderabad & others (supra)** in paragraphs 29 and 31 the Supreme Court held as under:-

"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal

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should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question land give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

11. The Supreme Court in **NTC (WBAB&O) Ltd. and another Vs. Anjan K. Saha** { (2004) 7 SCC 581} while considering the effect of ratio laid

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down by the Supreme Court in earlier case of **Managing Director, ECIL, Hyderabad & others (Supra)** has held in para 10 as under:-

> "10. As stated by the High Court, we do not find that the language of clause 14(4)(c) is mandatory. In any case, non-compliance therewith cannot be held to be a more vitiating factor than non-supply of enquiry report. If the Constitution Bench of this Court in cases of non-supply of enquiry report directs the procedure to be adopted by allowing the employer to restart the enquiry from the stage of supply of enquiry report without reinstating the employee, why such a course should not be directed to be adopted where the other grievance of the employee is denial of opportunity to show cause against proposed penalty? When the court can direct a fresh enquiry from the stage of supply of enquiry report the next step in the enquiry of giving opportunity against the proposed penalty can also be directed to be taken. After the fresh enquiry is over from the stage of supply of enquiry report, the employee can be granted opportunity against proposed penalty in terms of clause 14(4)(c) of the Model Standing Orders. Consequential order, if any passed, shall abide the final result of the proceedings. As held in the case of B. Karunakar if the employee is cleared of the charges and is reinstated, the disciplinary authority would be at liberty to decide according to law how it will treat the period from the date of dismissal till the period of reinstatement and the consequential benefits."

12. The Supreme Court in **H. L. Trehan and others Vs. Union of India & others** {(1989 1 SCC 764} in para 11 has held as under:-

> "11. .....It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant will offend against the provision of Article 14 of the Constitution....."

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13. In the facts and circumstances of the present case the petitioner was denied opportunity of hearing after enquiry report was submitted and before final order of imposition of penalty of reduction in rank from the post of Head Constable to the post of Constable was passed. The appellate authority has also not given any consideration to the submission of the petitioner that the petitioner was denied opportunity of hearing at the stage before imposition of penalty of reduction in rank. The appellate authority has completely ignored the provisions of Regulation 230 of the M.P. Police Regulations as well as the well settled principles of law as enunciated by the Supreme Court in various cases. At this stage, the petition cannot be thrown away on the ground of unreasonable delay in filing this petition.

14. For the reasons stated above, the petition is partly allowed to the extant that the petitioner be formally reinstated for the limited purpose of enabling the respondents to proceed with the enquiry from the stage of furnishing him with the copy of the enquiry report. After conclusion of the enquiry in case the petitioner is exonerated, the authorities shall decide according to law, about the payment of wages and further how the case of the petitioner be considered for promotion in accordance with law. No order as to costs.

Certified copy, as per Rules.

Sd/-
Satish K. Agnihotri
Judge

Thakur